

# EXHIBIT 5

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**UNITED STATES OF AMERICA,  
*ex rel.* PAUL FRASCELLA,**

**Plaintiff,**

**v.**

**ORACLE CORP., *et al.***

**Defendants.**

**CASE NO. 1:07cv529 (LMB/TRJ)**

**DEFENDANTS' RESPONSES TO UNITED STATES'  
FIRST SET OF INTERROGATORIES**

Pursuant to and in accordance with Local Civil Rule 26(c) and Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants Oracle Corp. and Oracle America (hereinafter "Defendants"), by and through undersigned counsel, hereby submit their Responses to United States' First Set of Interrogatories. Defendants' responses are made subject to and in accordance with its Objections, served on February 4, 2011. On February 14, 2011, Defendants and the Government met and conferred regarding Defendants' Objections. Agreements reached by the parties at that meeting are reflected in Defendants' responses below. Defendants reserve all objections to the admissibility at trial of any information provided in the Defendants' Responses to United States' First Set of Interrogatories, or any document produced pursuant thereto including, without limitation, all objections of the grounds that such information or document is not relevant to any claim or defense of any party. The production of any information does not constitute an admission by the Defendants that such information is relevant to the subject matter of the pending litigation or relevant to a claim or defense of any party. The Defendants reserve the right to object to further inquiry with respect to any subject matter. All information produced

**INTERROGATORY NO. 12:** Identify each and every software license transaction with a non-governmental customer in which you contend the customer received a “non-standard discount,” as defined by you in response to Interrogatory No. 11.

**RESPONSE TO INTERROGATORY NO. 12:** As stated in Defendants’ Objections, in order to fully respond to Interrogatory No. 12, Defendants would have to review each and every contract with a non-governmental customer, or tens of thousands of transactions. Such a task is not possible in the short discovery period ordered by the Court because it requires Defendants to review physical ordering and other documents (“job packets”) that are imaged in a non-searchable format. Such information is not readily available in summary form and is not apparent from Defendants’ raw transactional data. In light of this burden, the parties agreed in their February 14, 2011 meet and confer to negotiate a protocol to limit the scope of the information required to be provided pursuant to Interrogatory No. 12. Upon agreement by the parties to this protocol, Defendants will supplement their response to this Interrogatory.

**INTERROGATORY NO. 13:** Identify each and every software license transaction that you contend involved a Basis of Award (“BOA”) customer, as that term is defined in GSA Multiple Award Schedule Contract No. GS-35F-0108J.

**RESPONSE TO INTERROGATORY NO. 13:** Defendants have produced sufficient data for the Government to identify every software license transaction between January 1, 2001 and April 2004 that involved a BOA customer. All of the BOA customers were provided to the Government in Appendix D of the KPMG report. Using the customer information from the raw transactional data, the Government may determine every software license transaction involving the BOA customer for this time period.

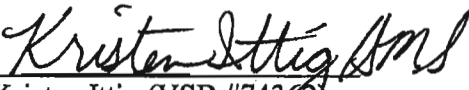
period. in response to this interrogatory and Requests for Production Nos. 22 and 27.

**INTERROGATORY NO. 16:** Identify each and every witness that you intend to call at trial in this matter.

**RESPONSE TO INTERROGATORY NO. 16:** Defendants will disclose trial witnesses in accordance with the Court's orders, local Civil Rules and the Federal Rules of Civil Procedure.

Respectfully submitted,

ARNOLD & PORTER LLP

  
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*Counsel for Defendants Oracle Corporation and Oracle America, Inc.*


**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following counsel by email and first class mail on this 18th day of February 2011.

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**CASE NO. 1:07cv529 (LMB/TRJ)**

**DEFENDANTS' SUPPLEMENTAL RESPONSE TO UNITED STATES'  
FIRST SET OF INTERROGATORIES**

Pursuant to and in accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants Oracle Corp. and Oracle America (hereinafter "Defendants"), by and through undersigned counsel, hereby supplement their Responses to United States' First Set of Interrogatories. .

**SUPPLEMENTAL RESPONSE TO INTERROGATORIES**

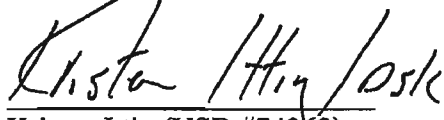
**INTERROGATORY NO. 10:** For the time period January 1997 through December 31, 2006, identify each and every non-governmental customer that entered into a contract with Oracle that contained a price hold provision. For each customer identified, state whether any subsequent licenses were ever purchased pursuant to that price hold during the time period January 2001 through December 2006 and identify each transaction pursuant to that price hold.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:** As stated in Defendants' Objections, in order to fully respond to Interrogatory No. 10, Defendants would have to review each and every contract with every non-governmental customer, or tens of thousands of transactions. Such a task is not possible in the short discovery period ordered by

the Court because it requires Defendants to review physical ordering and other documents ("job packets") that are imaged in a non-searchable format. While Defendants recently learned of certain summary data that may flag potential price hold provisions and other information (the "QP Discount Report"), they have not had the opportunity to verify the accuracy or reliability of information contained therein. Defendants will continue to investigate whether it is possible to conclusively identify price hold provisions without a physical review of job packets, and reserve the right to supplement this response accordingly. In light of this burden, the parties agreed in their February 14, 2011 meet and confer to negotiate a protocol to limit the scope of the information required to be provided pursuant to Interrogatory No. 10. Upon agreement by the parties to this protocol, Defendants will supplement their response to this Interrogatory.

Respectfully submitted,

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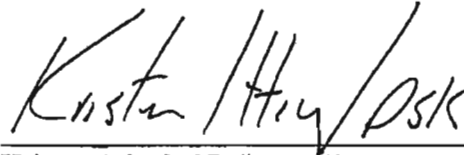
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following counsel by email on this 7th day of March 2011.

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A handwritten signature in black ink, appearing to read "Kristen Ittig / DSK", written over a horizontal line.

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